SERVED: February 13, 1995

NTSB Order No. EA-4321

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of January, 1995

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. JERRY RAY WILSON, Respondent.	)	Docket SE-13708

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on September 8, 1994, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator, finding that respondent had violated 14 C.F.R. 61.3(c) and 67.20(a)(4).[2] The

[1]The initial decision, an excerpt from the hearing transcript, is attached.

[2]§ 61.3(c) reads:

law judge, however, reduced the sanction from revocation, as proposed by the Administrator, to a 180-day suspension of respondent's commercial pilot, flight instructor, and medical certificates. We deny the appeal, and affirm the initial decision, although our reasons differ from those of the law judge.

The law judge found as a matter of credibility that respondent wrote on his medical certificate, intending not to change any information that had been there but to restore information that he thought had been there but was no longer legible.[3] The Administrator does not appeal the law judge's acceptance of respondent's explanation. Therefore, for purposes of assessing sanction, we must assume the truth of that explanation.

(..continued)

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter. . . .

§ 67.20(a)(4) provides:

(a) No person may make or cause to be made--

(4) Any alteration of any medical certificate under this part.

[3]Respondent, however, was wrong. In writing a "2" in the year portion of the date on his medical certificate, which then read "September 25, 1992," he altered that certificate. The date should have been September 25, 1991.

The Administrator argues that, regardless of respondent's intent, alteration of his medical certificate demonstrates that he is not qualified to hold a certificate. The Administrator believes that Administrator v. Hasley, NTSB Order EA-3971 (1993), recon. denied NTSB Order EA-4063 (1994) (where we affirmed the sanction of revocation based on a § 91.20(a)(4) violation), supports such a result, and he disagrees with the distinction the law judge drew between this case and Hasley.[4]

We have long held that intentional falsification on a medical application, for example, standing alone, warrants revocation. Here, we are dealing not with intentional falsification but with simple alteration. As the law judge noted and we found in Hasley, intent is not relevant to a § 91.20(a)(4) charge. This is not to say, however, that intent is irrelevant to sanction analysis. Indeed, in Administrator v. Payton, 2 NTSB 1994 (1975), we recognized the importance of reviewing the circumstances of the alteration when determining the appropriate sanction. In Hasley, we noted that respondent offered no explanation or mitigating circumstances for his alteration and, in the absence of them, one could conclude that he altered his medical certificate purposely to appear qualified for the commercial flights he then piloted. Here, in great contrast, the law judge found that respondent wrote the "2" on his certificate

[4]The law judge concluded that the sanction of revocation imposed in Hasley should not apply here because, in Hasley, the respondent used the altered certificate to exercise its privileges and benefitted from the alteration in that he made numerous commercial flights without a current certificate.

in an honest effort to make legible what he thought was accurate information.

We certainly do not countenance any alteration of official documents, and agree with the Administrator's sentiment that the integrity of aviation records demands diligent compliance with recordkeeping requirements. We also agree that respondent should (and easily could) have consulted his medical examiner or the FAA to determine the proper date before he took it upon himself to alter his certificate. Nevertheless, we do not agree with the Administrator that any alteration, for whatever reason it was made, or whatever explanation or mitigating circumstances given, warrants the most extreme sanction of revocation. Taking respondent's explanation as a given, which we must, we do not find that his alteration, as explained, demonstrates a lack of qualification. Nor do we find that his poor judgment in failing to check before altering the certificate is so egregious as to demonstrate a lack of qualification. Contrary to the Administrator's argument, we find this result entirely consistent with our decision in Payton. That case is much more akin to Hasley, than to Mr. Wilson's circumstance.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and

2. The 180-day suspension of respondent's commercial pilot, flight instructor, and medical certificates shall begin 30 days from the date of service of this order.[5]

HALL, Chairman, HAMMERSCHMIDT and FRANCIS, Members of the Board, concurred in the above opinion and order.

[5]For the purposes of this order, respondent must physically surrender his certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).